

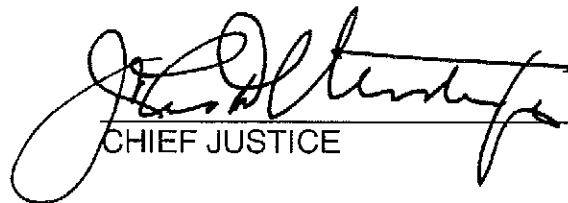
# Supreme Court of Kentucky

## ORDER

**IN RE: COURT RULES FOR PRETRIAL DIVERSION FOR THE 25th  
JUDICIAL DISTRICT**

Pursuant to KRS 533.262 and SCR 1.040(3)(a), and upon  
recommendation of the Judges of District Court, and being otherwise sufficiently  
advised: the Court Rules for the 25<sup>th</sup> Judicial District Pretrial Diversion, attached  
hereto, are hereby approved. This order shall be effective as of the date of this  
Order, and shall remain in effect until further orders of this court.

Entered this 30<sup>th</sup> day of January, 2009.

  
CHIEF JUSTICE

**DISTRICT COURT PRETRIAL DIVERSION PROGRAM  
25<sup>TH</sup> JUDICIAL DISTRICT  
PROPOSED COURT RULES**

**PRETRIAL DIVERSION PROGRAM**

**I. Eligibility Requirements**

- A. All persons charged in District Court with the commission of a misdemeanor shall be eligible for participation in the Administrative Office of the Courts Pretrial Services Diversion Program (Program) as an alternative to criminal prosecution, subject to the following conditions and exceptions:
  - 1. The charge of violation of KRS Chapter 189A shall not be diverted;
  - 2. A person who has previously participated in a pretrial diversion program shall not be eligible for participation in the Program unless the trial judge and prosecutor deem a defendant eligible for the Program regardless of his/her ineligibility; and
  - 3. A person charged with a violent offense shall not be diverted; and
  - 4. A felony amended to a misdemeanor is eligible for the Program if agreed upon by the trial judge and prosecutor.
- B. Nothing in this rule shall be deemed to limit the authority of the county attorney to withdraw criminal prosecution in any given case.

**II. Participation**

- 1. Upon consent of both the county attorney and the defendant, the trial judge may approve participation in the Program for any individual who meets the eligibility requirements established in Section A above unless the trial judge, in his/her discretion believes that:
  - 1. There is a substantial risk that the defendant will abscond from the jurisdiction of the court prior to fulfillment of the terms of the diversion contract;
  - 2. There is substantial risk that the defendant will commit another crime prior to fulfillment of the terms of the diversion contract;
  - 3. The defendant is in need of correctional treatment that can be provided most effectively by commitment to the county jail; or
  - 4. Participation in the Program would unduly depreciate the seriousness of the defendant's crime.
- B. Upon approval for participation in the program, the defendant must sign a

statement waiving his/her right to a speedy trial.

Prior to signing such statements, the defendant shall be given the opportunity to consult with an attorney if he/she so desires.

- C. Participation in the program shall not constitute an admission or presumption of guilt of the crime(s) charged, shall not be proof of guilt in any subsequent legal action, nor shall a Program participant be required to give a confession or admission of guilt.
- D. All Program records and all statements made by a defendant to the diversion officer regarding the contract shall be privileged and confidential, and shall not be admissible or discoverable for any purpose. Such information shall be exempt from subpoena. However, Program staff, the trial judge and the chief district judge may access the information for purpose of Program review, monitoring and supervision. The information shall not be released to any other person or entity without prior written consent of the trial judge or the defendant. Nothing in this paragraph shall be deemed to prohibit release of information to the victim regarding a defendant's participation in the Program.
- E. The fee for participation in the program shall be in an amount set by the Director of the Administrative Office of the Courts. The court may assess the fee on a sliding scale basis upon ability to pay or waive the fee entirely in the case of indigence.

### **III. The Diversion Contract**

- A. Upon approval of participation in the Program, the defendant shall meet with a diversion officer to establish a formal contract which specifies the Court-ordered conditions, the referral services to be used, the length of the contract, and, if required, the need for the defendant to make restitution, enter/complete a treatment program, or perform community service.
- B. Individual contract lengths shall be determined by the trial judge, not to exceed twelve (12) months.
- C. The Program participant shall be required to comply with any or all provisions of the diversion contract. If the Program participant fails to comply with the conditions of the contract, the diversion officer shall refer the participant to the trial judge for a determination of either termination or modification. The trial judge shall enter an order reflecting said determination. As with the original diversion contract, the participant must agree to the contract modifications, if any, prior to reinstatement. Upon termination for non-compliance, the county attorney may initiate prosecution of the defendant upon the original criminal charges(s).
- D. A Program participant may terminate his/her contract, at any time, by submitting a written statement indicating same. When termination is

prior to the expiration of the contract period, the diversion officer shall notify the trial judge and refer the case to the county attorney for the resumption of prosecution.

- E. Upon successful completion of the diversion contract, the charge(s) shall be formally and fully dismissed and all official records shall bear the notation that said charge(s) was dismissed as diverted. The administrative record will be retained in conformity with the Kentucky Court of Justice Records Retention Schedule.

### CITATION OF RULES

These rules may be cited as "DPR \_\_\_\_\_ # \_\_\_\_\_ "or District Court Practice and Procedure Rules, 25<sup>th</sup> Judicial District".

Vacant  
Division I

DATED: January 14, 2009

Brandy O Brown  
JUDGE BRANDY OLIVER BROWN  
25<sup>th</sup> Judicial District  
Division II

DATED: January 14, 2009

Earl-Ray Neal  
JUDGE EARL-RAY NEAL  
25<sup>th</sup> Judicial District  
Division III

Have Seen and Approved:

Cindra K. Walker  
Cindra K. Walker  
General Counsel  
Administrative Office of the Courts

Date: 1/21/09